

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

MARK HEIMKES,

Plaintiff,

V.

CIV. ACT. NO. 1:22-cv-448-TFM-N

**FAIRHOPE MOTORCOACH RESORT
CONDOMINIUM OWNERS
ASSOCIATION, INC.,**

Defendant.

ORDER

Pending before the Court is *Plaintiff's Motion for Stay of Proceedings* (Doc. 42, filed 3/26/23). Plaintiff moves the Court to stay the proceedings in this matter pending a ruling from the Baldwin County Circuit Court on his Motion to Alter, Amend the Order of the Court Granting Plaintiff's 12(B) Motion. Further briefing on the motion is not necessary.

The Court notes that Plaintiff misrepresents the Court’s prior orders, stating “[t]his Honorable Court . . . has barred the Plaintiff from pursuing his claims in Federal Court due to the District Court Summary Judgement Orders and the Order of the Baldwin County Circuit Court.” Doc. 42 at 2. The Court has **not** barred Plaintiff from pursuing his claims in Federal Court. At this stage, the Court has only denied Plaintiff’s requests for a temporary restraining order and preliminary injunction. *See* Docs. 8, 35. The Court will not regurgitate its findings in its order denying Plaintiff’s motion for preliminary injunction here, however, it is clear from reading the order that the reason for the denial was not, as Plaintiff claims, “due to the District Court Summary Judgement Orders and Order of the Baldwin County Circuit Court.” *See* Docs. 35, 42. Further, the Defendant has not filed a motion to dismiss in this action, and the Court has not entered any order dismissing Plaintiff’s claims. Counsel is reminded of his duty of candor to the Court

pursuant to Fed. R. Civ. P. 11.

Accordingly, the Court sees no reason why this case should not continue to proceed through discovery while the Baldwin County Circuit Court reviews Plaintiff's pending motion. Plaintiff's Motion for Stay of Proceedings (Doc. 42) is **DENIED**. Plaintiff is further **ORDERED** to provide a copy of this Order, along with the Court's prior order denying Plaintiff's request for a preliminary injunction (Doc. 35) to the Baldwin County Circuit Court for clarity.

DONE and **ORDERED** this 30th day of March, 2023.

/s/ Terry F. Moorner

TERRY F. MOORER

UNITED STATES DISTRICT JUDGE